United Nations A/C.5/65/SR.14

General Assembly
Sixty-fifth session
Official Records

Distr.: General
7 January 2011
Original: English

Fifth Committee

Summary record of the 14th meeting
Held at Headquarters, New York, on Friday, 5 November 2010, at 10 a.m.

Chair: Mr. Rosenthal ..... (Guatemala)
Chairman of the Advisory Committee on Administrative and Budgetary Questions: Ms. McLurg

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10-62195 (E)

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The meeting was called to order at 10.15 a.m.

Agenda item 113: Appointments to fill vacancies in subsidiary organs and other appointments

1. **The Chair** drew the Committee's attention to rule 92 of the rules of procedure of the General Assembly concerning elections by secret ballot and to paragraph 16 of General Assembly decision 34/401 on the rationalization of the procedures and organization of the General Assembly.

(d) Appointment of members of the International Civil Service Commission

(i) Appointment of members of the Commission (A/65/104/Rev.1; A/C.5/65/7)

2. **The Chair** drew the Committee's attention to document A/65/104/Rev.1, in which the Secretary-General referred to articles 2 to 4 of the statute of the Commission and invited the General Assembly to appoint five persons to fill the vacancies that would arise in the Commission on 31 December 2010. In document A/C.5/65/7, the Secretary-General communicated the names of seven persons who had been nominated by their respective Governments for appointment or reappointment for a four-year term of office beginning on 1 January 2011. Following the issuance of that document, the Secretariat had been informed that the Government of Argentina had withdrawn the candidature of its nominee, Mr. Guillermo Enrique González.

3. Since the number of candidates from the Group of African States, the Group of Latin American and Caribbean States and the Group of Western European and Other States corresponded to the number of vacancies for those regional groups, he took it that the Committee wished to recommend the candidates' appointment or reappointment by acclamation.

4. *It was so decided.*

5. *Mr. Boateng (Ghana) and Mr. Rhodes (Sierra Leone), in the case of the Group of African States, Ms. Gardner (Jamaica), in the case of the Group of Latin American and Caribbean States, and Ms. Bechtel (France), in the case of the Group of Western European and Other States, were recommended for appointment or reappointment to the International Civil Service Commission for a four-year term beginning on 1 January 2011.*

6. **The Chair** drew the Committee's attention to rule 93 of the rules of procedure of the General Assembly and invited members to elect by secret ballot one candidate from the Group of Eastern European States.

7. *At the invitation of the Chair, Mr. Wang Tao (China), Mr. Murongwana (South Africa) and Ms. García-Agulló (Spain) acted as tellers.*

8. *A vote was taken by secret ballot.*

Number of ballot papers:	188
Number of valid ballots:	188
Abstentions:	3
Number of members voting:	185
Required majority:	93
Number of votes obtained:	
Mr. Wyzner (Poland)	110
Mr. Mihut (Romania)	75

9. *Having obtained the required majority, Mr. Wyzner (Poland) was recommended for reappointment to the International Civil Service Commission for a four-year term beginning on 1 January 2011.*

(ii) Designation of the Chairman of the Commission (A/65/104/Rev.1; A/C.5/65/7/Add.1)

10. **The Chair** drew the Committee's attention to document A/65/104/Rev.1, in which the Secretary-General referred to articles 2 to 4 of the statute of the Commission and invited the General Assembly to designate a Chairman to fill the vacancy that would arise in the Commission on 31 December 2010. In document A/C.5/65/7/Add.1, the Secretary-General communicated the name of one person who had been nominated by his Government to serve as Chairman of the Commission for a four-year term of office beginning on 1 January 2011. Since the number of candidates corresponded to the number of vacancies, he took it that the Committee wished to recommend the candidate's designation by acclamation.

11. *It was so decided.*

12. *Mr. Rhodes (Sierra Leone) was recommended for designation as Chairman of the International Civil Service Commission for a four-year term beginning on 1 January 2011.*

(a) Appointment of members of the Advisory Committee on Administrative and Budgetary Questions (A/65/101/Rev.1; A/C.5/65/4)

13. **The Chair** drew the Committee's attention to document A/65/101/Rev.1, in which the Secretary-General referred to rules 155 and 156 of the rules of procedure of the General Assembly and invited the Assembly to appoint six persons to fill the vacancies that would arise in the membership of the Advisory Committee on Administrative and Budgetary Questions on 31 December 2010. In document A/C.5/65/4, the Secretary-General communicated the names of eight persons who had been nominated by their respective Governments for appointment or reappointment for a three-year term of office beginning on 1 January 2011. Following the issuance of that document, the Secretariat had been informed that the Government of Saudi Arabia had withdrawn the candidature of its nominee, Mr. Khalid Alwafi.

14. Since the number of candidates from the Group of Latin American and Caribbean States and the Group of Western European and Other States corresponded to the number of vacancies for those regional groups, he took it that the Committee wished to recommend the candidates' appointment or reappointment by acclamation.

15. *It was so decided.*

16. *Mr. Ruiz Massieu (Mexico), in the case of the Group of Latin American and Caribbean States, and Mr. Maddens (Belgium) and Mr. Moon (United Kingdom), in the case of the Group of Western European and Other States, were recommended for appointment or reappointment to the Advisory Committee on Administrative and Budgetary Questions for a three-year term beginning on 1 January 2011.*

17. After drawing the Committee's attention to rule 94 of the rules of procedure of the General Assembly, he invited members to elect by secret ballot three candidates from the Group of Asian States.

18. *At the invitation of the Chair, Ms. Brown (New Zealand), Ms. Rafajová (Slovakia) and Mr. Ceriani (Uruguay) acted as tellers.*

19. *A vote was taken by secret ballot.*

Number of ballot papers:	190
Number of valid ballots:	190
Number of members voting:	190
Required majority:	96
Number of votes obtained:	
Ms. Khampa (India)	164
Mr. Sugiyama (Japan)	147
Mr. Zhang Wanhai (China)	130
Mr. Hussain (Pakistan)	114

20. *Having obtained the required majority and the largest number of votes, Ms. Khampa (India), Mr. Sugiyama (Japan) and Mr. Zhang Wanhai (China) were recommended for appointment or reappointment to the Advisory Committee on Administrative and Budgetary Questions for a three-year term beginning on 1 January 2011.*

(b) Appointment of members of the Committee on Contributions (A/65/102/Rev.1; A/C.5/65/5)

21. **The Chair** drew the Committee's attention to document A/65/102/Rev.1, in which the Secretary-General referred to rules 158 and 159 of the rules of procedure of the General Assembly and invited the Assembly to appoint six persons to fill the vacancies that would arise in the membership of the Committee on Contributions on 31 December 2010. In document A/C.5/65/5, the Secretary-General communicated the names of six persons who had been nominated by their respective Governments for appointment or reappointment for a three-year term of office beginning on 1 January 2011. Since the number of candidates from the Group of African States, the Group of Latin American and Caribbean States and the Group of Western European and Other States corresponded to the number of vacancies for those regional groups, he took it that the Committee wished to recommend the candidates' appointment or reappointment by acclamation.

22. *It was so decided.*

23. *Mr. Acakpo-Satchivi (Benin) and Mr. Ndong Mbomio Mangue (Equatorial Guinea), in the case of the Group of African States, Mr. Greiver (Uruguay) and Mr. Pedroso (Cuba), in the case of the Group of Latin American and Caribbean States, and Mr. Eckersley (Australia) and Mr. Schlesinger (Austria), in the case of the Group of Western European and Other States, were recommended for appointment or reappointment to the Committee on Contributions for a three-year term beginning on 1 January 2011.*

(c) Confirmation of the appointment of members of the Investments Committee (A/65/103; A/C.5/65/6)

24. **The Chair** drew the Committee's attention to document A/65/103, in which the Secretary-General referred to article 20 of the Regulations of the United Nations Joint Staff Pension Fund and invited the General Assembly to confirm the appointment or reappointment of the four persons whom he had designated to fill vacancies in the Investments Committee for a term of office beginning on 1 January 2011. In document A/C.5/65/6, the Secretary-General submitted the names of four persons for confirmation by the General Assembly. Since the number of candidates corresponded to the number of vacancies, he took it that the Committee wished to recommend by acclamation that the Assembly should confirm the candidates' appointment or reappointment.

25. *It was so decided.*

26. *The Committee recommended that the Assembly should confirm the appointment or reappointment of Mr. Jiang (China), Mr. Kassow (Germany) and Mr. McDonough (United States of America) for a three-year term and Ms. Ploix (France) for a one-year term beginning on 1 January 2011.*

27. **The Chair** said that, in accordance with past practice, the Secretary-General proposed to appoint Ms. Ochoa-Brillembourg (Bolivarian Republic of Venezuela) and reappoint Mr. Pictet (Switzerland) as ad hoc members of the Investments Committee for a one-year term of office beginning on 1 January 2011. He took it that the Committee wished to recommend by acclamation that the Assembly should confirm their appointment or reappointment.

28. *It was so decided.*

29. *The Committee recommended that the Assembly should confirm the appointment of Ms. Ochoa-Brillembourg (Bolivarian Republic of Venezuela) and the reappointment of Mr. Pictet (Switzerland) as ad hoc members of the Investments Committee for a one-year term beginning on 1 January 2011.*

(e) Appointment of members of the Independent Audit Advisory Committee (A/65/105; A/C.5/65/8)

30. **The Chair** drew the Committee's attention to document A/65/105, in which the Secretary-General referred to paragraphs 3, 10, 11, 12 and 13 of the annex to General Assembly resolution 61/275 and invited the Assembly to appoint three persons to fill the vacancies that would arise in the membership of the Independent Audit Advisory Committee on 31 December 2010. In document A/C.5/65/8, the Secretary-General communicated the names of three persons who had been nominated by their respective Governments for appointment or reappointment for a three-year term of office beginning on 1 January 2011. Since the number of candidates from the Group of Asian States, the Group of Eastern European States and the Group of Latin American and Caribbean States corresponded to the number of vacancies for those regional groups, he took it that the Committee wished to recommend the candidates' appointment or reappointment by acclamation.

31. *It was so decided.*

32. *Mr. Rai (India), in the case of the Group of Asian States, Mr. Dubinkin (Russian Federation), in the case of the Group of Eastern European States, and Mr. Strachan (Jamaica), in the case of the Group of Latin American and Caribbean States, were recommended for appointment or reappointment to the Independent Audit Advisory Committee for a three-year term beginning on 1 January 2011.*

The meeting rose at 11.55 a.m.

United Nations A/C.5/65/SR.15

General Assembly
Sixty-fifth session

Official Records

Distr.: General
20 January 2011

Original: English

Fifth Committee

Summary record of the 15th meeting
Held at Headquarters, New York, on Wednesday, 10 November 2010, at 10 a.m.

Chair: Mr. Rosenthal ..... (Guatemala)
Chairman of the Advisory Committee on Administrative and Budgetary Questions: Ms. McLurg

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10-63134 (E)

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The meeting was called to order at 10.05 a.m.

Statement by the President of the General Assembly

1. **Mr. Deiss** (President of the General Assembly) commended the Committee on its work and requested its input to inform the forthcoming deliberations in plenary meeting on the revitalization of the work of the General Assembly. He urged the Committee to consider steps for ensuring the timely completion of its work.

Agenda item 140: Administration of justice at the United Nations (A/65/303, A/65/304, A/65/373 and Corr.1 and A/65/557; A/C.5/65/9)

2. **Mr. Terekhov** (Executive Director, Office of Administration of Justice), introducing the report of the Secretary-General on administration of justice at the United Nations (A/65/373 and Corr.1), said that the new formal system of justice, which was reviewed in chapter II of the report, was generally viewed as a significant improvement over the old system, particularly as it substantially decreased the length of time required to adjudicate a case. A number of issues were highlighted in the report, including a lack of human and financial resources, respondents' difficulties in coping with the increased number of hearings convened by the United Nations Dispute Tribunal and the tight new time limits that must be observed.

3. Chapter III contained responses to questions from the General Assembly, including on delegation of authority for disciplinary measures, the independence of the Management Evaluation Unit, monetary compensation awarded by the Dispute and Appeals Tribunals, the status and entitlements of Appeals Tribunal judges and recourse mechanisms for non-staff personnel.

4. In chapter IV, the Secretary-General drew the Assembly's attention to issues that might have financial implications or affect the interests of the Organization: the desire for continuity in the application of jurisprudence of the former United Nations Administrative Tribunal; the scope of the Secretary-General's discretion; harmonization of proceedings before the Dispute Tribunal; and issues regarding the interpretation of the statutes and rules of procedure of the Dispute and Appeals Tribunals.

5. In chapters V and VI, the Secretary-General made recommendations regarding the strengthening of the formal justice system and action to be taken by the General Assembly.

6. **Mr. Barkat** (United Nations Ombudsman), introducing the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/65/303), said that the establishment of the Ombudsman function as an informal dispute resolution mechanism at the United Nations was leading to a shift in the Organization's approach to internal conflict. Steps to strengthen that approach would reduce the cost of workplace tensions and strengthen the Organization's human capital by enabling staff to work in an environment of fairness and dignity.

7. In 2009, the Office's regional branches had become fully staffed and operational; demand for their services had exceeded expectations. As at 9 November 2010, the Office had received over 1,000 cases in the Secretariat alone, with a projected total of 1,200 by the end of the year, representing an increase of nearly 70 per cent compared to 2009. The complexity of cases was also increasing. Staff and the Administration had clearly demonstrated a willingness to resolve issues through the informal dispute resolution mechanism.

8. Another core function of the Office was to identify and analyse systemic issues and to make recommendations on ways of addressing them. The recommendations in the report had been finalized in conjunction with various departments, including the Office of Human Resources Management, to expedite the organizational response to the issues identified. He welcomed the Assembly's request in its resolution 64/233 for regular reporting on actions taken to address the Ombudsman's findings.

9. The Office played an important role in providing in-person intervention in cases at field offices and operations away from Headquarters. Seventy-four per cent of all requests for its services came from staff in non-Headquarters locations, including the deep field, which was characterized by harsh working conditions and where the Office's interventions had made a difference. Workplace conflicts often festered and then suddenly erupted: he was seeking better ways of preventing and responding to such occurrences. Regrettably, the Office's ability to meet critical requests for in-person intervention in the field had been hampered by a lack of resources. He therefore proposed the use of critical response teams, whose

physical presence on the ground would encourage employees and management to resolve issues through mediation rather than litigation.

10. On the question of coverage, he said that the Office currently served 60,000 staff members worldwide. An expansion to cover non-staff personnel would add 40,000 individuals to that number and would require additional resources.

11. Unlike the formal system of administration of justice, which only handled cases arising from administrative decisions, there was no limit to the types of issues that an ombudsman or mediator could address. Those issues could be tackled early and the root causes of conflict could be identified and addressed before they escalated. The indirect costs of conflict, which were often overlooked, were absenteeism, presenteeism (which meant coming to work but not working), sick leave, high turnover, and low morale and productivity. The report proposed incentives that would strengthen the informal system by focusing on three areas: enhancing cooperation by managers and colleagues to resolve situations informally; creating an organizational culture that addressed conflict more effectively; and improving access to services by deploying rapid response teams. The first two proposals would entail no financial cost to the Organization. At a time when the United Nations faced challenging missions throughout the world, it must be able to focus on those challenges without the distraction of workplace issues.

12. **Ms. McLurg** (Chairman of the Advisory Committee on Administrative and Budgetary Questions), introducing the related report of the Advisory Committee (A/65/557), said that it would take more time before the full impact of the establishment of the new system of administration of justice on the culture and practice of the Organization became apparent. Similarly, while there had been an initial increase in the workload compared with the previous system, it was too early to determine what the ongoing workload and output of the Tribunals and other offices would be. Greater awareness among the staff might increase their use of the system, but other factors, including a more established body of precedents, might reduce the number of cases or facilitate their disposition. The Advisory Committee's recommendations on resource requests reflected that view.

13. With respect to the proposal for a second full-time judge at each of the Dispute Tribunal's locations, the Advisory Committee noted that the three ad litem judges were approved up to 30 June 2011 and were funded through the Secretary-General's limited budgetary discretion. In addition, 20 of the 27 posts being requested under the regular budget reflected the regularization of temporary positions funded through the same mechanism; the other 7 posts had been requested for the Office of Staff Legal Assistance. In the light of those considerations, and given that the request was being made in the middle of the budgetary cycle, the Advisory Committee did not recommend approval of the proposal for additional full-time judges or the 27 posts under the programme budget. Instead, the temporary arrangements could be continued while further experience was gathered on the functioning of the new system.

14. With respect to the Office of Staff Legal Assistance, the Advisory Committee had taken into account the fact that proposals for a staff-funded legal assistance scheme had not yet been made. Furthermore, the Assembly would be considering the mandate and functioning of the Office at the current session; the Assembly's decisions should be taken into account in determining what resources should be approved for the Office.

15. While the Advisory Committee did not support the establishment of the two posts requested for the Office of Staff Legal Assistance under the support account for peacekeeping operations, it did recommend the establishment of one temporary P-3 position, given the number of cases being received from peacekeeping operations. The position should be based in Nairobi, where one of the United Nations Dispute Tribunal's Registries was located.

16. On non-post resources, the largest component proposed was $3.7 million for translation and interpretation services for the Tribunals. The estimates for those services did not sufficiently reflect actual requirements to date, which did not fully justify the level of resources being requested. The Advisory Committee therefore recommended that the Secretary-General should explore the most cost-effective means of meeting the Tribunals' needs for the remainder of the biennium and that $1 million should be approved for interpretation and translation services for the Tribunals.

17. Given the importance of an effectively functioning informal system to the overall system of administration of justice, the Advisory Committee supported efforts to raise awareness throughout the Organization of the capacity and benefits of the Office of the United Nations Ombudsman and Mediation Services. There was merit in a number of the proposals to provide incentives for staff to use the Office to resolve disputes. The Administration should consider those recommendations, many of which could be readily implemented and required neither policy changes nor additional resources.

18. **The Chair** drew the Committee's attention to the report of the Internal Justice Council on the administration of justice at the United Nations (A/65/304) and to a letter dated 27 October 2010 from the President of the General Assembly to the Chair of the Fifth Committee (A/C.5/65/9).

19. **Ms. Analena** (Vice-President of the Staff-Management Coordination Committee) said that she would present the views of the staff unions and associations participating in the Staff-Management Coordination Committee. That included Secretariat staff, except those in New York, whose staff union had elected to remain outside the Coordination Committee since 2003. Staff welcomed the new system of justice, which was for the most part independent, transparent, fair and more efficient than the old system. Nevertheless, much remained to be done to enhance the new system. She was dismayed that the Secretary-General's report on the administration of justice at the United Nations (A/65/373 and Corr.1) did not reflect the views of the staff, despite an agreement that those views would be included. The mention of a dedicated session of the Staff-Management Coordination Committee (A/65/373, para. 244) seemed to refer to a special session held in 2007, well before the new system of justice had been established.

20. With respect to the Secretary-General's request to the Assembly to direct the Tribunals to exercise their judicial review with full respect for the prerogatives of the Assembly and the role of the Secretary-General, she noted that the new system had been established to provide an independent review of the Secretary-General's decisions on behalf of the General Assembly. The report of the Redesign Panel (A/61/205 and Corr.1) had pointed out problems in the old system relating to the Secretary-General's power to choose between specific performance and the payment of limited compensation and the inconsistency of the Administrative Tribunal's jurisprudence on the duties of an international organization to its staff. The Secretary-General's proposals in chapter IV of his report would mean a return to that slow, inadequate system and the jurisprudence of the discredited Administrative Tribunal. The Assembly should consider whether the proposals would improve a justice system that was welcomed and trusted by staff or undermine fairness and accountability.

21. The staff supported the request for additional resources for the Office of Staff Legal Assistance. The egregious inequality of arms between management and staff that the Redesign Panel had observed in the old system had not been resolved in the new system. The Office of Staff Legal Assistance had no money for necessities such as pens, paper and office supplies. Surely the General Assembly had not intended to provide such inadequate funding for the only office in the new system dedicated to serving the needs of staff. Most of the staff unions were unable to provide funding for temporary posts in the Office, although members volunteered as counsellors in an attempt to bridge the gap. By forcing the Office to rely on volunteers and inadequate funding, the Organization was returning the system of staff legal assistance to the old, discredited model. United Nations staff were determined to follow the rules, work to their utmost capacity and carry out the Organization's mission; they looked to the Assembly to ensure that the new system of justice remained a robust tool in the service of the rule of law.

22. **Mr. Al-Shahari** (Yemen), speaking on behalf of the Group of 77 and China, said that he welcomed the progress made by the new system of administration of justice in disposing of the backlog of cases and addressing new ones. It was unfortunate that a cost-sharing arrangement with the funds and programmes had not yet been finalized; he trusted that an agreement would soon be reached. The Group was also concerned that no provision had been made for the construction of permanent courtroom space at the three Dispute Tribunal locations, as that might impede the disposition of cases.

23. For too long, United Nations staff had suffered the consequences of a poorly equipped professional legal assistance unit. It was regrettable that the Secretary-General had failed to make proposals to address that issue.

24. The Office of Administration of Justice should be headed by an official at the Assistant Secretary-General level at minimum. An enhanced oversight function was required to ensure the effective — and cost-effective — implementation of the new system. The system should also have an accountability mechanism to guarantee that it produced adequate jurisprudence that took into account the specificities of the United Nations system. An independent, effective and transparent system was imperative to ensure due process for and fair treatment of staff and to hold managers accountable for their actions.

25. **Mr. De Wolf** (Belgium), speaking on behalf of the European Union; the candidate countries Croatia, Iceland and the former Yugoslav Republic of Macedonia; the stabilization and association process countries Albania, Bosnia and Herzegovina, Montenegro and Serbia; and, in addition, Armenia, the Republic of Moldova and Ukraine, said that the new system of administration of justice, comprising formal and informal components and conceived as being independent, transparent, professional, adequately resourced and decentralized, provided substantially better recourse to justice for staff members. The new system, although still in the initial phase of implementation, had already begun to prove itself with the speedy disposition of cases and would continue to improve as all involved became more familiar with it.

26. The system's success would depend on its independence and efficiency. It was therefore important to ensure that the system received adequate resources, balancing the needs of the Organization with the harsh imperatives of the current fiscal climate. He concurred with the Advisory Committee that more experience was needed before the demands that would be placed on the system, and thus the infrastructure required to support it, could be ascertained. As the Advisory Committee had noted, the Secretary-General's requests for additional resources represented a 60 per cent increase over current costs.

27. With respect to recourse mechanisms for non-staff personnel, the European Union reiterated that the United Nations had a duty to ensure that effective remedies were available to all categories of staff. Nevertheless, more information was needed in order to determine what types of recourse would be most appropriate. He concurred with the members of the Sixth Committee that it was premature for the Assembly to express a view on the issues outlined in chapter IV of the Secretary-General's report (A/65/373). It was important not to infringe upon the independence of the Appeals Tribunal, which heard appeals against judgements of the Dispute Tribunal.

28. **Mr. Ballantyne** (New Zealand), speaking also on behalf of Australia and Canada, said that a properly functioning internal justice system was essential to the effort to strengthen the Organization's accountability, oversight and human resources management. He welcomed the progress made in managing the transition from the previous system. It was timely to examine the lessons learned in the previous year and to consider the adjustments required in order to ensure the smooth operation of the new system. However, many of the proposals on additional posts and other resources were linked to the caseloads of the Dispute and Appeals Tribunals, which had not yet stabilized; any significant changes to the system must be based on a careful analysis of trends over time.

29. **Mr. Gürber** (Switzerland), speaking also on behalf of Liechtenstein, said that the progress made by the new system of administration of justice in its first full year of operation was commendable. All individuals working for the United Nations, regardless of their contractual relationship with it, should have access to an independent body handling grievances and providing appropriate remedies. The two delegations supported the conclusion of the Sixth Committee that none of the options regarding remedies available to the different categories of non-staff personnel described by the General Assembly in paragraph 9 of its resolution 64/233 should be discounted at the current stage, and that the Assembly should revert to the matter at its sixty-sixth session, with the aim of finding a suitable and cost-effective solution.

30. The two delegations were encouraged to note that the emerging jurisprudence of the new Tribunals differed in some respects from that of their predecessors, recalling that the important principle of separation of powers dictated that the Secretary-General must henceforth be a party in the proceedings rather than being in any way above or outside those proceedings. However, as the Charter and relevant resolutions specified, that jurisprudence should not extend beyond the legal foundations of the Organization.

31. The staffing of parts of the Secretariat might have to be strengthened to meet the demands of the new system of administration of justice. A significantly

professionalized structure implied higher costs to the Organization, and a system hampered by backlogs and bottlenecks would fall short of the expectations of staff and Member States, and might compromise due process. At the same time, it might be premature to add permanent capacity to a system that was not yet operating at a normal pace and in which workflows and processes were still evolving. Perhaps the General Assembly should instead focus on establishing clear policy guidance in areas giving rise to the largest number of cases, including some of the human resources management issues currently before the Committee.

32. **Mr. Melrose** (United States of America) said that the staff and judges in the new system of administration of justice deserved recognition for having substantially improved the system's professionalism, transparency and efficiency. As the operations of the United Nations Dispute Tribunal and United Nations Appeals Tribunal were in a period of transition, with procedures and practices still evolving, it was premature to make a definitive assessment of the new system or to make significant changes to it.

33. Recalling that the General Assembly, in its resolution 63/253, had requested proposals for a staff-funded scheme to provide legal assistance and support, his delegation regretted that the Secretary-General had included no follow-up in his report, and urged him to analyse any such schemes that existed elsewhere. It commended the Office of Staff Legal Assistance for its initiative in establishing the Trust Fund for Staff Legal Assistance, and the Staff Coordinating Council of the United Nations Office at Geneva for its contribution of 50,000 Swiss francs to that Fund. It urged other staff unions to follow suit.

34. **Mr. Patel** (India) said that the new system of administration of justice was a marked improvement over its predecessor, and some of its benefits were already visible, thanks to the efforts of its staff and judges. Chief among the benefits was the speedier processing of cases, an essential component of ensuring that justice was done.

35. His delegation supported the use of the services of mediators and ombudsmen as the first recourse under the new system. Those mechanisms should be strengthened in order to improve accountability and human resources management by promoting mutual trust, harmony and understanding between staff and management. The system would ultimately be judged by whether or not staff were confident that their grievances would be addressed professionally, fairly and in a timely manner. The new system should remain consistent with the aims of overall human resources management reform in the United Nations system.

36. His delegation shared the Advisory Committee's disappointment at the delay in finalizing cost-sharing agreements with the funds and programmes and recalled the General Assembly's decision, in paragraph 62 of its resolution 62/228, that the related arrangements should be based on staff numbers rather than the number of cases processed. It urged the Secretary-General to expedite the conclusion of a cost-sharing arrangement.

37. While concurring generally with the Advisory Committee's view that it was too early to decide on a future course of action, his delegation was open to considering specific resource requests on a case-by-case basis, and supported the strengthening of the Office of Staff Legal Assistance as being crucial to the system's efficiency. It had noted the requests for funds for translation and interpretation, and the suggestion that travel entitlements of the Appeals Tribunal judges should be based on those of the judges of the former Administrative Tribunal.

38. **Mr. Al-Hajiri** (Qatar) said that, in order to ensure the effective administration of justice, the United Nations must establish a legal, administrative and financial system that ensured the rights of staff and respected human rights principles and the rule of law. Given that the goal was an independent, professional, responsive, transparent and decentralized system of administration of justice, the Organization should place more emphasis on the informal settlement of disputes.

39. The United Nations should serve as a model for other employers with regard to the administration of justice. It should therefore continue to provide legal services and assistance to its staff because they could not resort to national courts to resolve work-related grievances. Staff members should be encouraged to make use of informal dispute resolution mechanisms and should receive training in that regard. Mediators engaged in informal dispute resolution should be appointed in accordance with appropriate criteria.

40. Given the need to develop a transparent working environment, he welcomed the efforts of the Office of the United Nations Ombudsman and Mediation Services to reach staff members at field offices and operations away from Headquarters. He also

appreciated the concern that the Office had demonstrated for issues raised by local staff and its efforts to hold meetings with key stakeholders. In that connection, the Organization should provide staff with intensive training in mediation and conflict resolution and should seek to identify staff with expertise and experience in that area.

41. The Organization's responsibility to protect the rights of those who performed services for it should extend to United Nations peacekeepers. Although such personnel were bound by a code of conduct, there was no clear legislation that defined the Organization's responsibility towards them in the event that they were taken hostage, assaulted or killed in the line of duty. It was not acceptable to refer those matters solely to the host country. He therefore called on the competent bodies and committees to study the issue with a view to remedying a significant shortcoming in the administration of justice at the United Nations.

42. **Mr. Park** Chull-joo (Republic of Korea) said that, although his delegation acknowledged the success of the new system of administration of justice, improvements must be made in order for it to operate as efficiently as possible. His delegation agreed with the Advisory Committee that the number of cases being mediated was low, and stressed that every effort should be made to resolve disputes informally in order to avoid unnecessary litigation. His delegation also welcomed the key stakeholder forum that had been launched by the Office of the United Nations Ombudsman and Mediation Services. That forum would play an important role in addressing policy issues that were causing systemic problems.

43. His delegation urged the Secretariat and the relevant funds and programmes to conclude without delay an agreement on cost-sharing arrangements for the system of administration of justice, as called for by the General Assembly in its resolution 62/228. His delegation also looked forward to receiving in the near future the Secretary-General's proposals for a staff-funded scheme in the Organization that would provide legal assistance and support to staff, in accordance with General Assembly resolution 63/253.

44. His delegation supported the Secretary-General's proposal to introduce a mechanism to enable the Dispute Tribunal to address non-meritorious claims more expeditiously, and supported the increased use of videoconferencing facilities.

45. With regard to recourse mechanisms for non-staff personnel, his delegation believed that providing an effective remedy to all those who performed work for the United Nations was essential for ensuring the Organization's credibility and transparency. However, it agreed with the Advisory Committee that the system of administration of justice should continue to apply only to individuals covered by the Staff Regulations and Rules of the United Nations. His delegation looked forward to discussing a dispute resolution mechanism for non-staff personnel on the basis of an analysis of the advantages and disadvantages of the four options set out in the Secretary-General's report (A/65/373).

46. Concerning the emerging jurisprudence of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, his delegation noted that all elements of the new system must operate in accordance with the Charter and the legal and regulatory framework that had been approved by the General Assembly. It therefore expected that the Tribunals would be guided accordingly. His delegation concurred with the Advisory Committee that it was too early to assess the demand that would be placed on the administration of justice system and the resources required to support it. The Secretary-General was to be commended for using his limited budgetary discretion in order to arrange temporary support for the new system.

Agenda item 127: Financial reports (*continued*) (A/C.5/65/L.6)

Draft resolution A/C.5/65/L.6: Financial reports and audited financial statements, and reports of the Board of Auditors

47. *Draft resolution A/C.5/65/L.6 was adopted.*

48. **Mr. Nombembe** (Chairperson of the United Nations Board of Auditors) said that the Board of Auditors always sought to ensure that its reports conformed to the rigorous standards that applied to the auditing profession. The Board was therefore proud that the Committee had consistently adopted and endorsed all of its reports and recommendations. It was also particularly pleased to note that draft resolution A/C.5/65/L.6 incorporated the Advisory Committee's recommendation that the Board should report to the General Assembly annually on progress towards the implementation of the International Public Sector Accounting Standards (IPSAS).

49. In its reports to the General Assembly at the current session, the Board sounded a note of caution to all United Nations organizations regarding the sustainability of current audit opinions under the much stricter IPSAS framework. In that connection, while organizations that had received unqualified audit opinions were to be commended, they should take note of the more stringent accounting and auditing requirements of IPSAS. Those that had received modified audit opinions should address all significant issues in order to avoid further escalation, while at the same time taking action to ensure that new financial statement issues did not arise.

Agenda item 132: Pattern of conferences (*continued*) (A/C.5/65/L.7)

Draft resolution A/C.5/65/L.7: Pattern of conferences

50. *Draft resolution A/C.5/65/L.7 was adopted.*

The meeting rose at 11.50 a.m.

United Nations A/C.5/65/SR.16

General Assembly
Sixty-fifth session
Official Records

Distr.: General
14 January 2011

Original: English

Fifth Committee

Summary record of the 16th meeting
Held at Headquarters, New York, on Tuesday, 16 November 2010, at 10 a.m.

Chair: Mr. Tawana (Vice-Chair) ..... (South Africa)
Chairman of the Advisory Committee on Administrative and Budgetary Questions: Ms. McLurg

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In the absence of Mr. Rosenthal (Guatemala), Mr. Tawana (South Africa), Vice-Chair, took the Chair.

The meeting was called to order at 10.10 a.m.

Agenda item 137: United Nations pension system (A/65/9 and A/65/567; A/C.5/65/2 and A/C.5/65/3)

1. **Mr. Yossifov** (Chair of the United Nations Joint Staff Pension Board), introducing the report of the fifty-seventh session of the United Nations Joint Staff Pension Board (A/65/9), said that chapter II of the report provided an overview of Board recommendations and decisions. The first part of the chapter summarized those recommendations that required action by the General Assembly. Specifically, the Board recommended the approval of an amendment to the Fund's Regulations that would allow staff members who changed from full-time to part-time employment to continue to accrue full-time service for up to three years, provided that the required contributions were paid to the Fund at the full-time employment rate. The amendment applied the same constraints as those applied to periods of leave without pay for full-time staff. The Board also recommended the suspension, for all separations as from 1 January 2011, of the special index provision under the Fund pension adjustment system in light of the provision's conceptual deficiencies. Lastly, the Board recommended the approval of funding for the cost-sharing arrangement for the use of the new administration of justice system.

2. The thirtieth actuarial valuation of the Fund as at 31 December 2009 had revealed an actuarial deficit, the first in 14 years, of 0.38 per cent of pensionable remuneration, primarily reflecting the Fund's investment performance over the last two years of financial turbulence. Favourable performance in 2009 had been insufficient to offset the losses suffered in 2008, with the result that investment income had fallen short of the objective assumed in the actuarial valuation. The effect of updating the pension commutation factors to reflect the new mortality rates adopted in 2008 had also contributed to the losses recorded, which had been partially offset by lower than expected cost-of-living adjustments. The consulting actuary and the Committee of Actuaries had concluded that the current contribution rate remained sufficient to meet long-term liabilities and that, as at 31 December 2009, there was no need for deficiency payments under article 26 of the Regulations. The Board had also decided that no changes to the rate of contribution or the cap provision of the two-track feature of the pension adjustment system were necessary at the current time.

3. With regard to investment management, the Fund's total market value had increased by 32.2 per cent over the year ended 31 March 2010, representing a slight underperformance of 1.09 per cent relative to the established market benchmark. The combined two-year performance as at 31 March 2010 had been negative by 5.2 per cent, which represented an annualized outperformance of 0.47 per cent; the Fund had also outperformed its benchmark over the last 3, 5, 7 and 10 years. The Representative of the Secretary-General for the Investments of the Fund had explained the recent downward trend in the level of investment income received by the Fund and, as requested by the Board of Auditors and the Pension Board, had also provided a detailed explanation regarding the realized net loss of $467 million recorded in the calendar year 2009, as set out in paragraph 73 of the report.

4. Detailed information on the Fund's operations and financial position during the biennium 2008-2009 was provided in paragraphs 103 to 108 of the report. In that biennium, the number of active participants had increased by 10.3 per cent to 117,580, following an increase of 13.8 per cent in the previous biennium. Benefits in award had increased by 6.5 per cent to 61,841, after an increase of 5.3 per cent in the previous biennium. The principal of the Fund had increased from $30.6 billion to $33.1 billion; however, total investment income had fallen sharply to $2.7 billion from $7.2 billion in the prior biennium. The Fund's contribution income had increased by 18.5 per cent to $3.72 billion, while benefit payments had increased by 17.9 per cent to $3.76 billion, exceeding total contribution income by $41.5 million. Expenditures of $3.88 billion for benefits plus administrative and investment costs had exceeded total contribution income by $163 million.

5. The Board had considered a number of administrative items, described in paragraph 13 of the report. It had endorsed all the recommendations and conclusions of the Audit Committee, including the revised Internal Audit Charter. It had also noted that the Board of Auditors, in its report on the Fund's financial statements for the biennium ended 31 December 2009, had issued a modified audit

opinion as a caution to highlight inadequate disclosures concerning investments. In response, the Investment Management Division had provided the Board of Auditors with additional information on the losses recorded.

6. The Board had considered a number of matters relating to the governance of the Fund, specifically the revised accountability statement; the Board's composition and working methods; the draft job description for the next Chief Executive Officer; plan design; and the terms of appointment for the Chief Executive Officer and Deputy Chief Executive Officer, in respect of which it had approved an amendment to its rules of procedure. It had also approved a change in the Administrative Rules of the Fund to correspond to changes previously made in the Regulations in relation to participation and restoration of service, and had considered the impact of currency fluctuations on pension benefits. With regard to the forthcoming review of pensionable remuneration, the Board had requested that the defined-benefit plans of additional countries and similar international organizations should be included in the comparability review. Lastly, the Board had reviewed and taken note of the 15 judgements in respect of which the Board had been the respondent; the Board's decisions had been upheld in most cases, indicating that the Fund's Regulations and Rules were being properly administered.

7. The matters requiring the attention and decisions of the General Assembly were reflected in the proposed draft resolution on pension matters contained in annex XX to the Board's report.

8. **Mr. Sach** (Representative of the Secretary-General for the Investments of the Fund), introducing the report of the Secretary-General on investments of the United Nations Joint Staff Pension Fund and measures undertaken to increase diversification (A/C.5/65/2), said that, despite market turbulence, the Investment Management Division had been strengthening the Fund's investment infrastructure in order to reduce costs and enhance security. A record number of competitive procurement exercises had been launched, as detailed in paragraph 9 of the report; in particular, an electronic trade order management system had been rolled out in January 2010 and integrated with the Society for Worldwide Interbank Financial Telecommunication (SWIFT) payment system. The Division had also introduced personal securities, gift and hospitality policies to affirm its commitment to the highest standards of ethics, good governance and integrity.

9. In the 24-month period from 1 April 2008 to 31 March 2010, which included the major shocks of the recent financial crisis, the Fund's market value had fallen by some 6 per cent from $40.6 billion to $38.3 billion, having reached a low point of $26.7 billion in March 2009. However, the Fund's value had rebounded since 2009 to reach $41 billion as at 8 November 2010, which was equal to over 96 per cent of the peak value it had reached in late 2007. That upturn supported the recommendation of the Fund's consulting actuary that no action should be taken in respect of the actuarial deficit, which had been based on the Fund's market value of $37.5 billion at the end of 2009. The Division was confident that, with diligent bottom-up stock selection and prudent asset allocation, the Fund would continue to provide a secure foundation for the payment of pension benefits, while the implementation of new risk management software would provide an additional level of safety.

10. Following the rebalancing of the portfolio in the first half of 2009, the Fund had earned 32.2 per cent over the 12 months ended 31 March 2010, among the highest annual returns in its history. A breakdown of performance by asset class was given in paragraph 52 of the report. The Fund was further expanding its investments in developing countries and economies in transition; the Division continued to explore investment opportunities in such countries and had conducted investment visits to a number of regions in the period under review. Direct and indirect investments in developing countries had totalled $4.8 billion as at 31 March 2010, representing a 25 per cent increase over the 31 March 2008 level, and the portfolio was currently overweight in emerging markets.

11. In 2010 the markets had been characterized by equity market volatility, anxiety over exchange rates and protectionism, and concerns about the sustainability of euro-zone sovereign debt positions. The 7.5 per cent increase in the Fund's value between 1 January and 22 October 2010 reflected the benefits of diversification, prudent stock selection and tactical rebalancing. The Fund's performance had been primarily attributable to its global exposure to equities and fixed-income assets. As at 22 October 2010, equities had constituted 64.3 per cent; fixed-income

assets, 30 per cent; and real estate, 3.9 per cent of the Fund.

12. Since 2008, the Fund had been investigating a number of alternative assets. Following a lengthy and rigorous due diligence process, on 30 June 2010 the Fund had committed $150 million to the IFC African, Latin American and Caribbean Fund, L.P., a private equity fund created by the International Finance Corporation (IFC). That investment represented a sound diversification of asset classes and broadened the Fund's geographical diversification, increasing its stake in emerging markets.

13. Given the Fund's very long-term horizon and low turnover, unrealized gains and losses heavily outweighed realized gains and losses. Realized losses were generated as a result of portfolio pruning to ensure that only the most promising investments were retained; they were a natural outcome of managing short-term risk in order to meet the Fund's long-term objectives. In the calendar year 2009, unrealized gains had amounted to $6.2 billion, which dwarfed the realized loss of $467 million recorded that year.

14. With respect to the recommendations concerning portfolio risk management set out in the relevant report of the Board of Auditors (A/65/9, annex X, paras. 111-113), the Division had already implemented and activated 75 of the 128 controls outlined in its risk management manual, while 10 were partially active and the rest were in the process of being implemented. The Division would implement the recommendation to undertake a case-by-case review to identify lessons learned in respect of losses, and was already implementing a specific control concerning the implementation of lessons learned in respect of realized and unrealized losses and gains of more than 25 per cent. Concerning improvements in investment disclosure, the level of disclosure in the 2008-2009 accounts equalled the level in previous bienniums. In future, the Division would disclose realized and unrealized gains and losses in appropriately summarized and aggregated form, in line with industry best practice and the International Public Sector Accounting Standards (IPSAS). Templates for future disclosures would be discussed directly with the Pension Board's Audit Committee.

15. **Ms. Van Buerle** (Director, Programme Planning and Budget Division), introducing the report of the Secretary-General on the administrative and financial implications arising from the report of the United Nations Joint Staff Pension Board (A/C.5/65/3), said that, while annex XIX to the Board's report (A/65/9) reflected an increase in the overall administrative expenses of the Fund, the Board had decided to maintain the Fund's overall resources at the level of the initial appropriation and to accommodate the increase through the redeployment of resources from the investment budget. Consequently, the share of the United Nations under the cost-sharing arrangement would remain unchanged and the current appropriation under section 1 of the programme budget for the biennium 2010-2011 would be maintained.

16. **Ms. McLurg** (Chairman of the Advisory Committee on Administrative and Budgetary Questions), introducing the report of the Advisory Committee on the United Nations pension system (A/65/567), said that the Advisory Committee concurred with the Board of Auditors and the Pension Board regarding the need to mitigate the risks associated with extreme market volatility, which would continue to influence the Fund's annual performance in future years. With regard to the deficit revealed by the actuarial valuation as at 31 December 2009, it was reassuring that the Fund's consulting actuary and the Committee of Actuaries had concluded that the current contribution rate remained sufficient to meet long-term liabilities and that there was no need for deficiency payments.

17. Bearing in mind that IPSAS would be operational on 1 January 2012 and that a new Chief Financial Officer would be responsible for their implementation, that post should be filled as soon as possible. The Fund should finalize its IPSAS implementation plan in a timely manner and continue with its preparations in order to avoid any possible delays, while the Board of Auditors should provide advice and guidance on that matter.

18. The Advisory Committee's position regarding the Board's recommendation that the Fund Regulations should be amended to allow part-time staff to "buy" full-time participant status was unchanged; it did not support the proposed amendment.

19. With regard to the report of the Board of Auditors on the financial statements of the Fund for the biennium 2008-2009, the Advisory Committee was concerned that the Fund had received a modified audit opinion with one emphasis of matter on the

management of investments, specifically relating to the non-disclosure of realized and unrealized losses. It noted that the Investment Management Division had agreed to improve the disclosure of such information in future. The Advisory Committee agreed with the Board of Auditors that risk controls should be strengthened to avoid excessive losses; it also welcomed the Division's implementation of a revised risk management policy and a new risk management manual. It concurred with the observations and recommendations of the Board of Auditors and expected the Investment Management Division to continue to ensure that safety, profitability, liquidity and convertibility remained the paramount investment criteria, pursuant to General Assembly resolution 32/73.

20. The Advisory Committee recommended approval of the recommendations contained in paragraph 12 of the Pension Board's report (A/65/9), subject to the observations and recommendations set out in its own report (A/65/567).

21. **Mr. Al-Shahari** (Yemen), speaking on behalf of the Group of 77 and China, said that the United Nations pension system should be improved so as to ensure that retirement, death, disability and related benefits were provided to participants and retirees on the basis of full respect for the principles of transparency and accountability. The Group was pleased to note that the number of participants in the United Nations Joint Staff Pension Fund, the number of periodic benefits in award and the Fund's principal had increased during the biennium 2008-2009. With regard to the actuarial deficit revealed by the thirtieth actuarial valuation of the Fund, and the considerable volatility of the Fund's investments, the Group wished to reiterate that the ongoing world financial crisis called for a cautious analysis of all types of investment. Future investments should take potential risks into account and the Investments Committee should play a key role in providing guidance to the Investment Management Division. In that connection, the Group joined the Advisory Committee in welcoming the initiatives currently being implemented by that Division and concurred with the Board's recommendations regarding the revised risk management policy and the need for continued implementation of the Division's risk management manual. The four main investment criteria — safety, liquidity, convertibility and profitability — should be respected.

22. In the current financial and economic crisis, it was more imperative than ever that the Fund should act on its commitment to pursue broader geographical diversification of its investments. Developing countries remained underrepresented in the Fund's portfolio. The Group therefore urged the Fund to increase its investments in developing countries and regions, which could help balance the portfolio and offset the negative impact of setbacks in other markets, and to report back to the General Assembly on that issue.

23. The Group would be seeking further information in informal consultations on the steps that the Pension Board would take to implement the recommendations of the Board of Auditors. The Group would also seek clarification on the governance matters referred to in paragraph 23 of the Advisory Committee's report.

The meeting rose at 11.05 a.m.